

ORIGINAL

FILED IN CLERK'S OFFICE  
U.S.D.C.-Atlanta

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JAN 26 2005

LUTHER D. THOMAS, Clerk  
By: *[Signature]*  
Deputy Clerk

SUSAN PHILLIPS,

Plaintiff,

V.

TRACTOR SUPPLY COMPANY,

Defendant.

\*  
\*  
\* CIVIL ACTION FILE  
\* NO. 2004-CV-95241  
\*  
\*

**05 CV 0221**

NOTICE OF REMOVAL

**-ODE**

COMES NOW TRACTOR SUPPLY COMPANY, the named defendant in the above-captioned case, and files this Notice of Removal pursuant to 42 U.S.C. § 1332.

1.

TRACTOR SUPPLY COMPANY is the defendant in a civil action brought in the Superior Court of Fulton County, which is located within the Atlanta Division of the United States District Court for the Northern District of Georgia.

2.

Diversity of citizenship between the parties exists. Plaintiff is a resident and citizen of the State of Georgia. Meanwhile, defendant is a Delaware Corporation with its principal place of business in Tennessee.

{K:\101\101\00062545.DOC}

FORMS RECEIVED  
Consent To US Mag. *[Signature]*  
Pretrial Instructions *[Signature]*  
Title VII NTC *[Signature]*

3.

This case was originally filed on or around December 22, 2004, in the Superior Court of Fulton County, Case No. 2004-CV-95241. The defendants are removing this case due to diversity between the parties.

4.

This Notice of Removal is filed within thirty (30) days from the date of service on the defendant on December 30, 2004.

5.

Defendant attaches to this original pleading only, the entire record in the Superior Court of Fulton County.

6.

The aforementioned civil action is a civil action over which this Court has original jurisdiction under the provisions of 28 U.S.C. §1332 and is one which may be removed to this Court by defendant pursuant to the provisions of 28 U.S.C. §1332 because this Court has original jurisdiction in any action involving diversity of the parties in an amount in controversy exceeding \$75,000, exclusive of interest and costs, under the laws of the United States. Specifically, plaintiff asserts in her complaint "substantial injuries" and "substantial sums" for

medical costs. Plaintiff also seeks damages for cost income and pain and suffering. (Plaintiff's Complaint, ¶¶4 and 6)

7.

Defendant has given written notice of the filing of this Notice to the plaintiff by mailing a copy of this Notice of Removal to plaintiff's counsel via Certified Mail, Return Receipt Requested, Receipt No. 7002 3150 0006 5943 2698.

Defendant has filed a written notice with the Clerk of Superior Court of Fulton County, a copy of which is attached.

8.

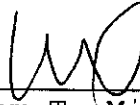
The undersigned has read this Notice of Removal, and to the best of the undersigned's knowledge, information and belief, formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law, and it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

WHEREFORE, defendant prays that the case be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

Respectfully submitted,

CRUSER & MITCHELL, LLP

Peachtree Ridge, Suite 750  
3500 Parkway Lane  
Norcross, Georgia 30092  
TEL: 404-881-2622



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William T. Mitchell  
Georgia Bar No. 513810  
Counsel for Defendant

# CRUSER & MITCHELL, LLP

ATTORNEYS AT LAW

## ATLANTA OFFICE

PEACHTREE RIDGE, SUITE 750  
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ROBYN OLIVER WEBB†  
JENNIFER MCBATH TIPPING  
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OFFICES IN:  
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NEW YORK  
NEW JERSEY

## WRITER'S DIRECT ACCESS

(404) 881-2633  
bmitchell@cmlawfirm.com

\* MEMBER OF N.Y. BAR  
† OF COUNSEL

www.cmlawfirm.com

January 25, 2005

### VIA CERTIFIED MAIL – 7002 3150 0006 5943 2698 RETURN RECEIPT REQUESTED

Christopher A. Bennett, Esq.  
Hartley, Rowe & Fowler, P.C.  
P. O. Box 489  
Douglasville, GA 30133

RE: *Susan Phillips v. Tractor Supply Company*  
Superior Court of Fulton County, CAF#2004-CV-95241

Dear Mr. Bennett:

In compliance with 28 U.S.C. § 1332, this letter is to give you formal written notice that the defendants have filed a Notice of Removal with the United States District Court, Northern District of Georgia, Atlanta Division. I am enclosing a copy of the Notice of Removal.

In further compliance with 28 U.S.C. § 1332, I have filed a copy of the Notice of Removal with the Superior Court of Fulton County. I enclose a copy of the Notice to the Clerk of the Superior Court of Fulton County.

Best regards.

Very truly yours,



William T. Mitchell

WTM:sr  
Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing **NOTICE OF REMOVAL** upon all parties to this matter by depositing a true copy of same in the U. S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Christopher A. Bennett, Esq.  
Hartley, Rowe & Fowler, P.C.  
P. O. Box 489  
Douglasville, GA 30133

This 26 day of January, 2005



---

William T. Mitchell  
Georgia Bar 513810

CT System

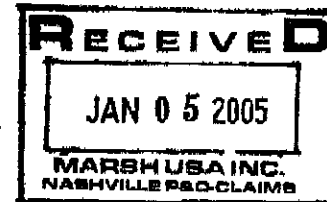
JAN 3  
Service of Process Transmittal Form  
Atlanta, Georgia

12/30/2004

Via Federal Express (2nd Day)

TO: Kim Vance  
Tractor Supply Company  
200 Powell Place  
Brentwood, TN 37027

Phone: (615) 366-4829 ex:  
EMAIL: KVANCE@TRACTORSUPPLY.COM



RE: PROCESS SERVED IN GEORGIA

FOR TRACTOR SUPPLY COMPANY Domestic State: De

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

1. TITLE OF ACTION: Susan Phillips, Pltf. vs Tractor Supply Company, Dft.
2. DOCUMENT(S) SERVED: Summons, Complaint.
3. COURT: Superior Court, Fulton County, GA  
Case Number 2004CV95241
4. NATURE OF ACTION: Personal injuries - Unspecified amount - Trip and fall on June 22, 2004.
5. ON WHOM PROCESS WAS SERVED: CT Corporation System, Atlanta, Georgia
6. DATE AND HOUR OF SERVICE: By Process server on 12/30/2004 at 09:30
7. APPEARANCE OR ANSWER DUE: 30 days
8. ATTORNEY(S): Christopher A. Bennett  
Hartley, Rowe and Fowler, PC  
PO Box 489  
Douglasville, GA 30133
9. REMARKS: Served by the Sheriff.

SIGNED CT Corporation System

PER Cindy J. Zidick /LM  
ADDRESS 1201 Peachtree Street, N.E.  
Atlanta, GA 30361  
SOP WS 0008882222

Information contained on this transmittal form is recorded for CT Corporation System's record keeping purposes only and to permit quick reference for the recipient. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information that can be obtained from the documents themselves. The recipient is responsible for interpreting the documents and for taking the appropriate action.

SHERIFF'S ENTRY OF SERVICE

SC-95-2

CLYDE CASTLEBERRY CO., CONVENT, GA 30015

Civil Action No. 2004CV15241  
Date Filed 12-22-04

Superior Court ☒  
State Court ☐  
Juvenile Court ☐  
Magistrate Court ☐  
Probate Court ☐

Georgia, Fulton COUNTY

Attorney's Address  
Christopher A. Bennett  
Hartley, Rowe & Fowler, P.C.  
P.O. Box 489  
Douglasville, GA 30133

Susan Phillips

Plaintiff

VS.

Name and Address of Party to be Served.

Tractor Supply Co.  
Registered Agent: C.T. Corporation  
1201 Peachtree Street, NE  
Atlanta, GA 30361

Tractor Supply Co.

Defendant

SHERIFF'S ENTRY OF SERVICE

Garnishee

PERSONAL

☐ I have this day served the defendant \_\_\_\_\_ personally with a copy of the within action and summons.

NOTORIOUS

I have this day served the defendant \_\_\_\_\_ by leaving a copy of the action and summons at his most notorious place of abode in this County.

☐ Delivered same into hands of \_\_\_\_\_ described as follows: age, about \_\_\_\_\_ years; weight \_\_\_\_\_ pounds; height, about \_\_\_\_\_ feet and \_\_\_\_\_ inches, domiciled at the residence of defendant.

CORPORATION

Served the defendant Tractor Supply Co.  
☒ by leaving a copy of the within action and summons with Cindy L. Dick CT Corp 0930AM a corporation in charge of the office and place of doing business of said Corporation in this County.

TACK & MAIL

☐ I have this day served the above styled affidavit and summons on the defendant(s) by posting a copy of the same to the door of the premises designated in said affidavit, and on the same day of such posting by depositing a true copy of same in the United States Mail, First Class in an envelope properly addressed to the defendant(s) at the address shown in said summons, with adequate postage affixed thereon containing notice to the defendant(s) to answer said summons at the place stated in the summons.

NON EST

☐ Diligent search made and defendant \_\_\_\_\_ not to be found in the jurisdiction of this Court.

This 30 day of Dec, 20 04

CH 2232

DEPUTY

SHERIFF DOCKET \_\_\_\_\_ PAGE \_\_\_\_\_

WHITE-CLERK CANARY-PLAINTIFF PINK-DEFENDANT



SUMMONS

SC-85-1

Clyde Carlsberry Co., Covington, GA, 30015

IN THE SUPERIOR/STATE COURT OF Fulton COUNTY  
STATE OF GEORGIA

Susan Phillips

CIVIL ACTION  
NUMBER

2004CV95341

PLAINTIFF

VS.

Tractor Supply Co.

DEFENDANT

SUMMONS

TO THE ABOVE NAMED DEFENDANT: Tractor Supply Company

Registered Agent: C.T. Corporation

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

Christopher A. Bennett  
Hartley, Rowe & Fowler, P.C.  
P.O. Box 489  
Douglasville, GA30133

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 22 day of Dec, 20 04.

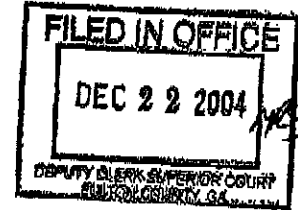
Clerk of Superior/State Court

BY [Signature]

Deputy Clerk

INSTRUCTIONS: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum sheet is used.

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA



SUSAN PHILLIPS,

Plaintiff,

v.

TRACTOR SUPPLY COMPANY,

Defendant.

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CIVIL ACTION

FILE NO: 2004CV95241

COMPLAINT FOR DAMAGES

COMES NOW, SUSAN PHILIPS ("Plaintiff"), and files this her action for damages against  
TRACTOR SUPPLY COMPANY ("Defendant") and respectfully shows the Court the following:

1.

Defendant has its registered office in Fulton County, Georgia and is subject to the jurisdiction  
of this Court. The Defendant may be served by serving its registered agent at the following address:  
CT Corporation, 1201 Peachtree Street, NE, Atlanta, Georgia 30361.

2.

Venue is proper in Fulton County.

3.

On June 22, 2004, at approximately 1:45 p.m., Plaintiff was on the premises of Defendant for  
the purpose of purchasing items from Defendant. As Plaintiff was crossing the parking lot, owned  
by Defendant after exiting Defendant's store, Plaintiff tripped on a "cow panel". The "cow panel"  
was protruding from a wooden pallet, due to the negligence of the Defendant and fell to the ground  
as a result.

4.

As a result of the trip and fall, Plaintiff suffered substantial injuries which required Plaintiff to undergo medical treatment and to expend substantial sums for medical expenses and other costs. The Plaintiff has suffered and continues to suffer substantial injury of body and mind, including medical expenses, mental anguish, and pain and suffering.

5.

Defendant's negligence in not keeping its premises safe is the sole proximate cause of the Plaintiff's accident, injuries and resulting damages.

6.

Plaintiff is entitled to recover from the Defendant the sum of that will compensate her for her general and special damages including damages for her injuries, medical expenses, lost wages and pain and suffering.

**ATTORNEY'S FEES**

7.

Defendant has acted in bad faith and has caused Plaintiff unnecessary trouble and expense by causing the subject litigation. Accordingly, the Defendant is responsible for reasonable attorney's fees.

WHEREFORE, Plaintiff prays as follows:

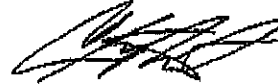
- (a) That process issue and that the Defendant be served as required by law;
- (b) That the Plaintiff has a trial by jury on all issues of fact;
- (c) That the Plaintiff have judgment against the Defendant in the sum that will compensate her for her damages;
- (d) That the Plaintiff recover attorney's fees and all costs of this action; and

(f) That the Plaintiffs have such other and further relief as the Court may consider equitable and appropriate.

This 21 day of December, 2004.

Respectfully submitted,

HARTLEY, ROWE & FOWLER, P.C.



CHRISTOPHER A. BENNETT

State Bar No. 050590

Attorney for Plaintiff

P. O. Box 489  
Douglasville, Georgia 30133  
(770) 920-2000

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

SUSAN PHILLIPS,

Plaintiff,

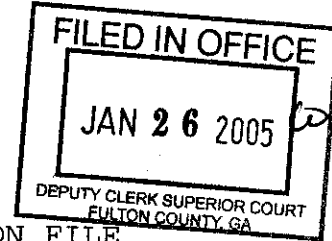
V.

TRACTOR SUPPLY COMPANY,

Defendant.

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CIVIL ACTION FILE  
NO. 2004-CV-95241



NOTICE OF FILING NOTICE OF REMOVAL

**-ODE**

TO: CLERK, SUPERIOR COURT OF FULTON COUNTY

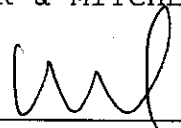
In compliance with 28 U.S.C. § 1446(d), you are hereby notified of the filing of a Notice of Removal in this action with the United States District Court for the Northern District of Georgia, Atlanta Division, copies of which are attached hereto.

This 26 day of January, 2005.

Respectfully submitted,

CRUSER & MITCHELL, LLP

Peachtree Ridge, Suite 750  
3500 Parkway Lane  
Norcross, Georgia 30092  
TEL: 404-881-2622

  
\_\_\_\_\_  
William T. Mitchell  
Georgia Bar No. 513810  
Counsel for defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing **NOTICE OF FILING NOTICE OF REMOVAL** upon all parties to this matter by depositing a true copy of same in the U. S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Christopher A. Bennett, Esq.  
Hartley, Rowe & Fowler, P.C.  
P. O. Box 489  
Douglasville, GA 30133

This 26 day of January, 2005



---

William T. Mitchell  
Georgia Bar 513810

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

SUSAN PHILLIPS,

Plaintiff,

V.

TRACTOR SUPPLY COMPANY,

Defendant.

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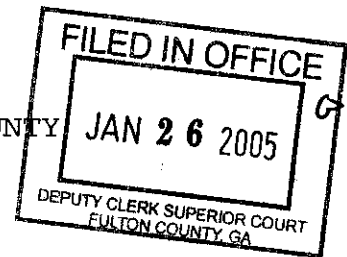
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CIVIL ACTION FILE

NO. 2004-CV-95241



~~ODE~~

ANSWER AND DEFENSES

COMES NOW, TRACTOR SUPPLY COMPANY, defendant in the above-styled civil action, and hereby files and serves his Answer and Defenses to plaintiff's Complaint for Damages (hereinafter "Complaint") and shows the Court as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state or set forth claims against defendant upon which relief can be granted.

SECOND DEFENSE

As a Second Defense, defendant answers the numbered paragraphs of plaintiff's Complaint as follows:

1.

Defendant can neither admit nor deny the allegations contained in paragraph 1 of plaintiff's Complaint for want of

sufficient information to form a belief as to the truth thereof and puts plaintiff upon strict proof of same.

2.

Defendant can neither admit nor deny the allegations contained in paragraph 2 of plaintiff's Complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiff upon strict proof of same.

3.

Defendant denies the allegations contained in paragraph 3 of plaintiff's Complaint.

4.

Defendant can neither admit nor deny the allegations contained in paragraph 4 of plaintiff's Complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiff upon strict proof of same. In further response, to the extent plaintiff implies wrongdoing by defendant in this paragraph, such allegations are denied.

5.

Defendant denies the allegations contained in paragraph 5 of plaintiff's Complaint.



6.

Defendant denies the allegations contained in paragraph 6 of plaintiff's Complaint.

**ATTORNEY'S FEES**

7.

Defendant denies the allegations contained in paragraph 7 of plaintiff's Complaint.

8.

All other allegations contained in plaintiff's Complaint not hereinbefore specifically responded to are hereby denied.

**THIRD DEFENSE**

To the extent as may be shown by the evidence through discovery, defendant asserts that plaintiff's alleged damages, if any, were directly and proximately caused by persons or entities other than this defendant.

**FOURTH DEFENSE**

To the extent as may be shown by the evidence through discovery, defendant shows that plaintiff's alleged damages, if any, were directly and proximately caused by the acts or omissions of plaintiff which constituted contributory and comparative negligence and failure to exercise ordinary care.

**FIFTH DEFENSE**

To the extent as may be shown by the evidence through discovery, defendant avers that plaintiff, by the exercise of ordinary care, could have avoided the consequences of any act or failure to act of defendant; however, defendant denies that any act or failure to act on its part caused or contributed to, in any way whatsoever, the damages complained of in plaintiff's Complaint.

**SIXTH DEFENSE**

To the extent as may be shown by the evidence through discovery, defendant avers that it is not liable to plaintiff because plaintiff's own negligence equaled or exceeded that of defendant, if any. However, defendant denies it produced, brought about, caused, or contributed to, in any way whatsoever, the damages complained of in plaintiff's Complaint.

**SEVENTH DEFENSE**

To the extent applicable, defendant asserts each affirmative defense set out in O.C.G.A. § 9-11-8, as to laches, statute of limitations, improper/insufficient service and process, and improper jurisdiction.

**EIGHTH DEFENSE**

Plaintiff's alleged injuries and damages, if any, were not foreseeable to defendant.

WHEREFORE, having answered fully, this defendant respectfully requests that this Court dismiss the Complaint and cast all costs against plaintiff.

**DEFENDANT DEMANDS A TRIAL BY JURY.**

CRUSER & MITCHELL, LLP

Peachtree Ridge, Suite 750  
3500 Parkway Lane  
Norcross, Georgia 30092  
404/881-2622 (Telephone)  
404/881-2630 (Facsimile)



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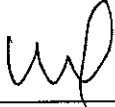
William T. Mitchell  
Georgia Bar No. 513810  
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing **ANSWER AND DEFENSES** to all parties to this matter by depositing a true copy of same in the U. S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Christopher A. Bennett, Esq.  
Hartley, Rowe & Fowler, P.C.  
P. O. Box 489  
Douglasville, GA 30133

This 26 day of January, 2005.

  
\_\_\_\_\_  
William T. Mitchell  
Georgia Bar No. 513810